BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

COLETTE JACKE)
Claimant)
VS.)
) Docket No. 1,019,569
INTERSTATE BRANDS CORP.)
Self-Insured Respondent)
AND	
AND	
COLETTE JACKE)
Claimant)
VS.)
) Docket No. 1,021,562
SPEC BUILDING MATERIALS CORP.)
Respondent)
AND)
)
INDIANA LUMBERMEN'S)
Insurance Carrier)

ORDER

Claimant appealed the April 21, 2005, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

Issues

Claimant alleges she injured her right shoulder in a series of repetitive traumas performing keyboarding at work and, therefore, she now seeks medical benefits and treatment, including surgery, under the Workers Compensation Act.

The parties addressed claimant's requests for medical treatment that were filed in the claim against Interstate Brands Corporation (IBC) and the claim against SPEC Building Materials Corporation (SPEC) in the same preliminary hearing. In the April 21, 2005, preliminary hearing Order, Judge Hursh ruled claimant's present need for medical treatment was not due to the injuries claimant sustained at either IBC or SPEC. Accordingly, the Judge denied claimant's request for medical benefits.

Claimant contends Judge Hursh erred. Claimant argues the evidence establishes the medical treatment she now requires is directly related to the work she performed for SPEC. Accordingly, claimant requests the Board to reverse the April 21, 2005, Order and to require SPEC to provide her benefits.

Conversely, both IBC and SPEC contend the April 21, 2005, Order should be affirmed.

The only issue before the Board on this appeal is whether claimant's present need for medical treatment is related to injuries claimant sustained working for either IBC or SPEC.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds claimant's present need for medical treatment to her right shoulder is directly related to the work injury claimant sustained at SPEC Building Materials Corporation. Accordingly, the April 21, 2005, Order should be reversed.

Claimant began having right shoulder symptoms while working for Interstate Brands Corporation. And in November 2003 claimant saw Dr. Daniel J. Gurley, who diagnosed claimant as having right rotator cuff syndrome and impingement. The doctor provided claimant with drug samples and offered claimant physical therapy, which she declined.

Claimant continued working for IBC (without returning to the doctor for additional treatment, without medical restrictions, and without missing work due to her right shoulder condition) until she was laid off on October 9, 2004, when IBC moved her job to Emporia, Kansas.

Claimant then worked for another employer, Aldi, for two or three weeks. Claimant left that job because she was not proficient with a certain computer program.

During the last week of October 2004, claimant began working for SPEC, where she performed data entry for approximately eight hours per day. In mid-November 2004, claimant experienced increased right shoulder symptoms, including swelling and severe pain. Following work on November 19, 2004, claimant sought medical treatment at Olathe Medical Services, Inc., where she saw Dr. Robert E. Ham. Based upon the history that claimant provided the doctor, Dr. Ham concluded claimant's symptoms were related to the increased data entry claimant performed for SPEC.

Dr. Ham restricted claimant from working with her right arm for one week and, in addition, referred claimant to Dr. Vincent Carabetta for nerve conduction studies and to Dr. Prem Parmar.

The next day, November 20, 2004, claimant sought treatment at Pickering Chiropractic and was restricted from using her right shoulder for a week.

When claimant provided SPEC with her medical restrictions, she was let go. Accordingly, claimant did not work from approximately November 19, 2004, until approximately Christmas Eve of 2004, when she began working as a utility teller for a bank.

Before claimant began working for the bank, she had already started physical therapy, which had been ordered by Dr. Parmar. Dr. Parmar began treating claimant on November 29, 2004, and from the outset diagnosed possible right shoulder impingement and considered possible trigger point injections. Although the exhibit is difficult to read, it appears Dr. Parmar wrote on November 29, 2004, that claimant should be accommodated by requiring her to perform her regular job only four to six hours per day.

When physical therapy did not remedy claimant's symptoms, Dr. Parmar injected claimant's right shoulder. On January 3, 2005, the doctor noted that he wanted an MRI to rule out a rotator cuff tear and might consider a change in treatment depending on those results. At their next visit on January 10, 2005, the doctor again injected claimant's right shoulder and noted that claimant might be a candidate for shoulder arthroscopy if she did not improve. The doctor's notes from the January 18, 2005, follow-up visit indicate claimant desired the shoulder arthroscopy.

While undergoing medical treatment, claimant continued to work for the bank until February 10, 2005, when they mutually decided to part ways. Claimant did not work again until the end of March 2005, when she began working for a temporary employment agency. Claimant's testimony establishes that the work she performed for the bank and the work she is now performing for the employment agency does not compare to the more physically challenging work she performed for SPEC. Furthermore, the work claimant performed for both the bank and the temporary agency would not violate Dr. Parmar's November 29, 2004, recommendation that apparently was intended to limit claimant to only four to six hours per day of data entry type work.

Claimant's right shoulder condition deteriorated while working for SPEC. The work was much more physically demanding than the work she performed for IBC, Aldi, the bank, or the employment agency. After working for SPEC, claimant needed medical restrictions, physical therapy, and shoulder injections. Because that treatment did not resolve her symptoms, claimant now requires shoulder surgery.

The Board concludes claimant's present need for surgery is due to the work she performed for SPEC. Claimant has sustained an accidental injury arising out of and in the course of her employment with SPEC. Accordingly, claimant's request for medical benefits from SPEC should be granted.

In the claim against SPEC, the appropriate date of accident is claimant's last day of work for that company, which was on or about November 19, 2004.

WHEREFORE, the Board reverses the April 21, 2005, Order. SPEC Building Materials Corporation and its insurance carrier are responsible for providing claimant with benefits under the Workers Compensation Act for her right shoulder injury.

IT IS SO ORDERED.

Dated this day of June, 2005.

BOARD MEMBER

Michael J. Joshi, Attorney for Claimant
 M. Joan Klosterman, Attorney for Interstate Brands Corp.
 Michael P. Bandre, Attorney for SPEC and Indiana Lumbermen's Kenneth J. Hursh, Administrative Law Judge
 Paula S. Greathouse, Workers Compensation Director